Supreme Court, U. S.
FILED
JAN 17 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-955

DEHAVILLAND AIRCRAFT OF CANADA, LTD.,
Petitioner,

vs.

SAMUEL J. BETAR, PUBLIC ADMINISTRATOR OF COOK COUNTY (ILLINOIS) AND ADMINISTRATOR OF THE ESTATE OF RAGHUBIR DUTT LAW, DECEASED,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

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STATEMENT OF THE CASE.

Petitioner, DeHavilland Aircraft of Canada, Ltd., is the manufacturer of aircraft which it sells nationwide. The complaint alleges that Petitioner is doing business in Illinois, both directly and through a wholly-owned subsidiary, DeHavilland of Canada, Inc., which is but the alter ego of petitioner, and not operating independent of it.

Allegations of the complaint make clear that the administrator, an appointed public official of the County of Cook, State of Illinois, has no stake in the litigation. Only the next of kin,

the widow and children of the deceased, have any stake or interest in the litigation.

The Court of Appeals held that under the conceded facts and circumstances of this case, where the administrator has no stake in the litigation, *Mecom* v. *Fitzsimmons Drilling Co.*, 284 U. S. 183 (1931) did not apply. It held:

> The plaintiff here argues, however, and we agree, that *Mecom* is not even applicable. (Pet. p. 11a, fn. 2)

ARGUMENT.

I.

THE COURT OF APPEALS DECISION IS NOT IN CONFLICT, BUT IN HARMONY WITH RECENT DECISIONS ON THE SUBJECT.

The Court of Appeals decision in the instant case is in harmony with the decisions of other circuits. *Vaughan* v. *Southern Ry. Company* (4th Cir. 1976), 542 F. 2d 641; *Mullins* v. *Seals* (4th Cir. 1977), 562 F. 2d 326; *McSparran* v. *Weist* (3d Cir. 1968), 402 F. 2d 867; *Bass* v. *Texas Power and Light Co.* (5th Cir. 1970), 432 F. 2d 763; *Rogers* v. *Bates* (8th Cir. 1970), 431 F. 2d 16; *Bishop* v. *Hendricks* (4th Cir. 1974), 495 F. 2d 289; *Miller* v. *Perry* (4th Cir. 1972), 456 F. 2d 63.

Typical of the foregoing cases is the Fourth Circuit Court of Appeals holding in *Vaughan* v. *Southern Rwy Co., supra.* The next of kin were citizens of Virginia. The administrator was a resident of North Carolina. As here, the administrator had no stake in the litigation. In refusing to apply *Mecom* v. *Fitzsimmons Drilling Co.* (1931), 284 U. S. 183, the Circuit Court drew upon its prior decision in *Miller* v. *Perry,* where the next of kin of a Florida resident who instituted suit in North Carolina, were treated as the real parties in interest, not the North Carolina administrator.

> On appeal, we reversed the district court and held that the citizenship of a resident administrator reluctantly procured by out-of-state beneficiaries for the sole purpose of complying with a state procedural requirement should not be looked to when to do so would defeat diversity jurisdiction. In so holding, we implicitly decided that the rule announced by the Supreme Court in *Mecom* v. *Fitzsimmons*

Drilling Co., 284 U. S. 183, 52 S. Ct. 84, 76 L. Ed. 233 (1931) is not "inflexible and constitutionally mandated." 456 F. 2d at 64.

Vaughan v. *Southern Rwy Co.*, 542 F. 2d 641, 643.

The same considerations apply here.

The administrator in the case at bar is a nominal party only. He has no relationship to the deceased. Nor does he have any with the next of kin. He is a statutory appointee whose only function is to open and/or administer estates where no other administrator has been appointed. He is only a nominal party whose role in this case was, and is, simply to bring the suit for the benefit of the deceased's next of kin.

He has no stake whatsoever in the litigation.

The only ones having a stake in the litigation are the widow and children of the deceased. They are the only ones who would, or could, share in the proceeds of any recovery resulting from his wrongful death. And they are the only ones who have any financial interest whatsoever in the litigation.

Under the circumstances present here, *Mecom* v. *Fitzsimmons Drilling Co.* (1931), 284 U. S. 183, does not apply.

II.

THERE IS NO INCONSISTENCY BETWEEN THE DECISION IN THIS CASE AND HOLDINGS BY THE SEVENTH CIRCUIT IN OTHER CASES.

The defendant misapplies *First National Bank of Chicago* v. *Mottola* (N. D. Ill. 1969), 302 F. Supp. 785, 791 aff'd. sub nom., *First National Bank of Chicago* v. *Ettlinger* (7th Cir. 1972), 465 F. 2d 343. *Mottola* involved an *active* decedent's estate where the administrator was charged with collecting the assets and administering the estate. He was not, as here, a nominal party whose only function was to file suit.

Defendant's contention "that the interplay between the *Mecom* decision and 28 U. S. C. § 1359 has generated confusing and

conflicting results" also lacks merit. Section 1359 has been construed to prohibit the use of an administrator's citizenship to create diversity jurisdiction where the administrator is appointed solely for such purpose, or he has no duties to perform other than bringing a legal action.

> The reason or motive that will render the out-of-state administrator's citizenship important for diversity purposes must be one that harmonizes with the thrust and purposes of Section 1359 itself. *Bishop* v. *Hendricks, supra.*, 495 F. 2d 289, 293 (4th Cir. 1974).

The administrator clearly has no duties to perform here. And the Court of Appeals' agreement "that *Mecom* is not even applicable", is proper.

CONCLUSION.

The Court of Appeals decision is in harmony with the decisions of other circuits. There is no basis for review by the Supreme Court.

WHEREFORE, the plaintiff respectfully suggests that the defendant's Petition for a Writ of Certiorari be denied.

Respectfully submitted,

LEONARD M. RING,
Counsel for Respondent

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111 West Washington Street,
Chicago, Illinois 60602,
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Of Counsel.

APPENDIX.

STATE OF ILLINOIS
COUNTY OF COOK } ss.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
County Department—Law Division

Samuel J. Betar, Public Administrator of Cook County, Administrator of the Estate of Raghubir Dutt Law, deceased, *Plaintiff,* *vs.* DeHavilland Aircraft of Canada, Ltd., and de Havilland Canada, Inc., *Defendants.*	77L 8087 Jury Demand

COMPLAINT AT LAW

Now comes Samuel J. Betar, Public Administrator of Cook County, Administrator of the Estate of Raghubir Dutt Law, Deceased, by and through his attorney, Leonard M. Ring, and complaining of the Defendants, DeHavilland Aircraft of Canada, Ltd., and de Havilland Canada, Inc., alleges:

COUNT I

1. That the Plaintiff, Samuel J. Betar, Public Administrator of Cook County, was duly appointed Administrator of the Estate of Raghubir Dutt Law, deceased, by the Circuit Court of Cook County, Probate Division, on April 27, 1977.

2. That the decedent, Raghubir Dutt Law, was at the time of his death, the 3rd day of May, 1976, a resident of Lusaka, Zambia, and a citizen of New Delhi, India.

3. That at the time of his death, the decedent left surviving him the following next of kin, all being nationals of India:

URMILA, his widow
AMEETA LAW—daughter—Age 21
DEVIKA (Dolly) LAW—daughter—age 20
REETA LAW—daughter—Age 15
MONICA LAW—daughter—Age 13

4. On May 3, 1976, and for some time prior thereto, the defendant, DeHavilland Aircraft of Canada, Ltd., was engaged in the manufacture of aircraft in the Province of Ontario, Canada, and said defendant did engage in the sale of said aircraft throughout the world, including the continents of Africa and the United States of America.

5. That said Defendant, DeHavilland Aircraft of Canada, Ltd., as part and parcel of its aircraft sale program, and to induce and facilitate the same, did at all times relevant, engage in advertising, mailing of brochures and other literature, and employed and sent sales persons into the United States of America, including the State of Illinois, to promote, demonstrate and sell its aircraft.

6. The Defendant, de Havilland Canada, Inc., a Delaware Corporation, is a wholly owned subsidiary of the Defendant, DeHavilland Aircraft of Canada, Ltd., and has its principal place of business in Rosemont, Illinois. The sole function of the Defendant, de Havilland Canada, Inc., is to distribute and sell auxiliary and replacement parts manufactured by the Defendant, DeHavilland Aircraft of Canada, Ltd., for the aircraft manufactured by it, to induce and promote the sale of said aircraft in the United States of America and the State of Illinois.

7. On or about May 3, 1976, Defendant, DeHavilland Aircraft of Canada, Ltd., transported one of the aircraft it had

manufactured, a Twin Otter, Registration C-GDHA, to Lusaka, Zambia, for demonstration to the Zambian Air Force.

8. The decedent, Raghubir Dutt Law, was at the time of the occurrence in question, a Group Leader in the Air Force of Zambia.

9. On or about the said 3rd day of May, 1976, the decedent boarded said aircraft at the Lusaka International Airport, along with other members of the Zambian Air Force and was aboard said aircraft when it crashed at Monge, Zambia, as hereinafter set forth.

10. The decedent, Raghubir Dutt Law, was at all relevant times in the exercise of ordinary care and caution for his own safety.

11. From the time of take-off and including the time of the occurrence hereinafter described, said Twin Otter aircraft was under the command of Captain Amos Pudsey, the pilot-agent of the Defendant, DeHavilland Aircraft of Canada, Ltd., and during the course of said demonstration, the Defendant, DeHavilland Aircraft of Canada, Ltd., acting through its agent, Amos Pudsey, was negligent in one or more of the following respects:

(a) failed to maintain control of said aircraft;

(b) operated said aircraft at an angle of climb that caused the stall of the rate of climb of said aircraft;

(c) failed to take remedial steps in response to the aircraft's stall warning horn;

(d) failed to change the altitude of said aircraft in response to the signal from the stall warning horn;

(e) overloaded said aircraft;

12. As a direct and proximate cause of one or more of the foregoing negligent acts or omissions of the Defendants, its aircraft wobbled to port at an altitude of 250 feet, went out of control and crashed to starboard. By reason thereof, Plaintiff's

decedent, Raghubir Dutt Law, sustained mortal wounds in the crash of the aircraft or from the ensuing flames that engulfed the same after said crash, from which injuries the decedent died on said 3rd day of May, 1976.

WHEREFORE, Plaintiff prays for entry of judgment against the Defendants, DeHavilland Aircraft of Canada, Ltd., and de Havilland Canada, Inc., in the sum of Seven Hundred Fifty ($750,000.00) Thousand Dollars, plus costs of suit.

COUNT II

For further complaint against the Defendants, DeHavilland Aircraft of Canada, Ltd., and de Havilland Canada, Inc., Plaintiff alleges:

1. That the Plaintiff, Samuel J. Betar, Public Administrator of Cook County, was duly appointed Administrator of the Estate of Raghubir Dutt Law, deceased, by the Circuit Court of Cook County, Probate Division on April 27, 1977.

2. That the decedent, Raghubir Dutt Law, was at the time of his death, the 3rd day of May, 1976, a resident of Lusaka, Zambia and a citizen of New Delhi, India.

3. That at the time of his death, the decedent left surviving him the following next of kin, all being nationals of India.

URMILA LAW—his widow
AMEETA LAW—daughter—Age 21
DEVIKA (Dolly) LAW—daughter—Age 20
REETA LAW—daughter—Age 15
MONICA LAW—daughter—Age 13

4. On May 3, 1976, and for some time prior thereto, the defendant, DeHavilland Aircraft of Canada, Ltd., was engaged in the manufacture of aircraft in the Province of Ontario, Canada, and said defendant did engage in the sale of said aircraft throughout the world, including the continents of Africa and the United States of America.

5. That said Defendant DeHavilland Aircraft of Canada, Ltd., as part and parcel of its aircraft sale program, and to induce and facilitate the same, did at all times relevant, engage in advertising, mailing of brochures and other literature, and employed and sent sales persons into the United States of America including the State of Illinois, to promote, demonstrate and sell its aircraft.

6. The Defendant, de Havilland Canada, Inc., a Delaware Corporation, is a wholly owned subsidiary of the Defendant, DeHavilland Aircraft of Canada, Ltd., and has its principal place of business in Rosemont, Illinois. The sole function of the Defendant, de Havilland Canada, Inc., is to distribute and sell auxiliary and replacement parts manufactured by the Defendant, DeHavilland Aircraft of Canada, Ltd., for the aircraft manufactured by it, to induce and promote the sale of said aircraft in the United States of America and the State of Illinois.

7. On or about May 3, 1976, Defendant, DeHavilland Aircraft of Canada, Ltd., transported one of the aircraft it had manufactured, a Twin Otter, Registration C-GDHA, to Lusaka, Zambia, for demonstration to the Zambian Air Force.

8. The decedent, Raghubir Dutt Law, was at the time of the occurrence in question, a Group Leader in the Air Force of Zambia.

9. On or about the said 3rd day of May, 1976, the decedent boarded said aircraft at the Lusaka International Airport, along with other members of the Zambian Air Force for said demonstration in Lusaka, Zambia, and was aboard said aircraft when it crashed at Monge, Zambia, as hereinafter set forth.

10. The decedent, Raghubir Dutt Law, was at all relevant times in the exercise of ordinary care and caution for his own safety.

11. From the time of manufacture of said aircraft to the time of the occurrence hereinafter described, the aircraft was under the control of the Defendant, DeHavilland Aircraft of

Canada, Ltd., and said crash would not have occurred in the absence of negligence.

12. As a direct and proximate cause of the negligence of the Defendants, said aircraft wobbled to port at an altitude of 250 feet, went out of control and crashed to starboard. By reason thereof, Plaintiff's decedent, Raghubir Dutt Law, sustained mortal wounds in the crash of the aircraft, or from the ensuing flames that engulfed the same after said crash, from which injuries the decedent died on said 3rd day of May, 1976.

WHEREFORE, Plaintiff prays for entry of judgment against the Defendants, DeHavilland Aircraft of Canada, Ltd., and de Havilland Canada, Inc., in the sum of Seven Hundred Fifty ($750,000.00) Thousand Dollars, plus costs of suit.

COUNT III

For further complaint against the Defendants, DeHavilland Aircraft of Canada, Ltd., and de Havilland Canada, Inc., Plaintiff alleges:

1. That the Plaintiff, Samuel J. Betar, Public Administrator of Cook County, was duly appointed Administrator of the Estate of Raghubir Dutt Law, deceased, by the Circuit Court of Cook County, Probate Division on April 27, 1977.

2. That the decedent, Raghubir Dutt Law, was at the time of his death, the 3rd day of May, 1976, a resident of Lusaka, Zambia, and a citizen of New Delhi, India.

3. That at the time of his death, the decedent left surviving him the following next of kin, all being nationals of India.

URMILA LAW—his widow
AMEETA LAW—daughter—age 21
DEVIKA (Dolly) LAW—daughter—age 20
REETA LAW—daughter—age 15
MONICA LAW—daughter—age 13

4. On May 3, 1976, and for some time prior thereto, the defendant, DeHavilland Aircraft of Canada, Ltd., was engaged in the manufacture of aircraft in the Province of Ontario, Canada, and said defendant did engage in the sale of said aircraft throughout the world, including the continents of Africa and the United States of America.

5. That said Defendant, DeHavilland Aircraft of Canada, Ltd., as part and parcel of its aircraft sale program, and to induce and facilitate the same, did at all times relevant, engage in advertisting, mailing of brochures and other literature, and employed and sent sales persons into the United States of America, including the State of Illinois, to promote, demonstrate and sell its aircraft.

6. The Defendant, de Havilland Canada, Inc., a Delaware Corporation, is a wholly owned subsidiary of the Defendant, DeHavilland Aircraft of Canada, Ltd., and has its principal place of business in Rosemont, Illinois. The sole function of the Defendant, de Havilland Canada, Inc., is to distribute and sell auxiliary and replacement parts manufactured by the Defendant, DeHavilland Aircraft of Canada, Ltd., for the aircraft manufactured by it, to induce and promote the sale of said aircraft in the United States of America and the State of Illinois.

7. On or about May 3, 1976, Defendant, DeHavilland Aircraft of Canada, Ltd., transported one of the aircraft it had manufactured, a Twin Otter, Registration C-GDHA, to Lusaka, Zambia, for demonstration to the Zambian Air Force.

8. The decedent, Raghubir Dutt Law, was at the time of the occurrence in question, a Group Leader in the Air Force of Zambia.

9. On or about the said 3rd day of May, 1976, the decedent boarded said aircraft at the Lusaka International Airport, along with other members of the Zambian Air Force for said demonstration in Lusaka, Zambia, and was aboard said aircraft when it crashed at Monge, Zambia, as hereinafter set forth.

10. The decedent, Raghubir Dutt Law, was at all relevant times in the exercise of ordinary care and caution for his own safety.

11. The aircraft, as designed and manufactured by the Defendant, DeHavilland Aircraft of Canada, Ltd., contained an unreasonably dangerous condition or defect, by reason whereof the aircraft, in the course of demonstration in flight, wobbled to port at an altitude of 250 feet, went out of control to starboard, and crashed.

12. As a direct and proximate cause of the unreasonably dangerous condition or defect, the said aircraft wobbled to port at an altitude of 250 feet, went out of control and crashed to starboard. By reason thereof, Plaintiff's decedent, Raghubir Dutt Law, sustained mortal wounds in the crash of the aircraft, or from the ensuing flames that engulfed the same after said crash, from which injuries the decedent died on said 3rd day of May, 1976.

WHEREFORE, Plaintiff prays for entry of judgment against the Defendants, DeHavilland Aircraft of Canada, Ltd., and de Havilland Canada, Inc., in the sum of Seven Hundred Fifty ($750,000.00) Thousand Dollars, plus costs of suit.

Attorney for Administrator of the Estate of Raghubir Dutt Law, deceased.

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